aid, legitimately, as I think, the terms of section 110 of the Land Code. I think that section shows that there is at least some positive duty in the transferor to assist the transferee to effect registration, if necessary. In this case the transferor, through no fault of his own, was unable to perform that duty. It may be going too far to suggest that section 110 creates an implied "covenant for further assurance"; but I think its effect is analogous to that. Suppose that after execution a transfer were accidentally lost or destroyed before presentation. It is obvious that the Court would order the vendor to execute a second transfer. I think it must now order his personal representative to transfer in the same way. It has never been doubted that, if the contract to sell remains purely executory at the death of the vendor, his personal representative will be ordered to perform it. I can see no reason why the purchaser should be in a worse position, if matters have gone somewhat further and a transfer has been executed, but not presented, at the time of the death.

Finally, Mr. Donnelly, relies on an argument which appears wholly conclusive, that the vendor, and so, under section 158 of the Land Code, his personal representative, held and holds as trustee for the purchaser. I think this principle is stated in its simplest form in *Underhill on the Law of Trusts*, 9th edition, page 188, Art. 32, as follows :—

> "In every case (not coming within the scope of any of the preceding articles) where the person in whom real or personal property is vested has not the whole equitable interest therein, he is pro tanto a trustee of that property for the persons having such equitable interests."

The learned trial Judge held that the trust in favour of the purchaser in whom the title has not yet vested subsists only until possession passes. This is wholly contrary to the general principle. No authority was cited to support it, and I think it is sufficiently disproved, if disproof is needed, by the decision in *Loke Yew v. Port Swettenham Rubber Co. Ltd.*[1]. I think the general principle applies in the fullest sense to this case, and I have no doubt that the respondent as administrator is a bare trustee of this land for the appellant.

For these reasons I think the appeal should be allowed, the judgment of the learned trial Judge should be set aside, an order for specific performance of the conract in the usual terms should be made, and the respondent should pay the costs of the appellant here and below out of the assets of the estate of the deceased come to his hands, or in default of such assets, personally. The deposit of $500 should be paid to the appellant's solicitors.

Appeal allowed.

ONG HAY v. LYE CHIN LOY.

[Orig. Civ. Juris. (Taylor, J.) February 4, 1952]

[Kuala Lumpur — Civil Suit No. 179 of 1951]

Land — Ejectment and trespass — Damages — Remoteness.

The plaintiff desired to build on a vacant land which the defendant rented for storage. The plaintiff gave him notice to vacate but the defendant did not vacate. The plaintiff claimed damages for trespass; he also claimed damages based on the increased cost of building. The defendant contended that the damages had not actually resulted; they were future and problematic and were too remote, not flowing as a direct consequence of the trespass.

Held, the damages based on an increased cost of building had not been actually sustained and might not be sustained and the rise was not in any sense caused by the delay due to defendant's trespass. But had the defendant not delayed building operations the houses could have been completed and could have been let; the plaintiff, then, had lost rent and the defendant was liable for such loss and for damages for the trespass.

ACTION FOR DAMAGES.

H. Y. Teh for the plaintiff.

J. S. H. Skrine for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is an action for ejectment and damages for trespass to land. Some of the points in controversy were settled or abandoned at the hearing and the only question remaining is the amount of damages. For this purpose the facts may be condensed.

The plaintiff has recently purchased four vacant shop lots on which he wishes to build.

The defendant is the lessee of neighbouring land on which he has a factory for precasting concrete blocks. He had rented the vacant shop lots from the plaintiff's vendor, as storage space for his materials. The plaintiff gave him notice to vacate, warning him that he was ready to commence building. The defendant has not yet vacated the land and continues to be a trespasser thereon.

The cost of building has greatly increased since the date when the plaintiff was ready to commence and he contends that the measure of the damages is the measure of this increase.

The defendant contends that these damages have not actually resulted, that they are future and problematical, and also that they are not a direct consequence of the defendant's trespass and are too remote.

If the plaintiff had actually entered into a contract, his building contractor would not have been able to proceed and the plaintiff would have become liable to him either for a substantial sum by way of

extras or as compensation for rescission. In my view it would have been imprudent for the plaintiff to have entered into a binding contract to build until the land was vacated and available for building. The defendant cannot rightly complain that the damages are not ascertained where ascertainment of them would have been likely to increase them. As the plaintiff had had his plans passed, obtained licences and so forth, incurring substantial preliminary expense, it is impossible to doubt his sincerity. Nor do I doubt that if he made a contract to-morrow the cost would substantially exceed the cost six months ago. The fact that the precise amount has not been ascertained is not an insuperable obstacle because the difference can be estimated on professional advice.

But the fact remains that this particular damage has not been actually sustained and may never be sustained. It is possible, though not probable, that some political event might so affect markets during the next few weeks that the plaintiff would be able to build his houses at, or near, the former price. Also, he is not committed to build; he might sell the land at a profit to someone else. There is, in fact, no security that in the long run the plaintiff will suffer any damage under this head though at the moment it looks as though he would. If this were the only factor I should be disposed to postpone assessment of damages until the actual cost of the buildings had been ascertained.

The question of remoteness, however, is a separate issue from the questions of uncertainty and futurity. Can it be said that the increase in cost is a natural result of the delay? Prices sometimes fall. It might easily happen that by postponing building for six months a much lower price would be tendered. If that had in fact occurred the plaintiff would have suffered no damage whatever under this heading. He would have benefitted by the unforeseen result of a delay which was, *prima facie,* unfavourable to him.

In short, the rise in prices of materials was not in any sense caused by the delay. It was an independent event; the fact that it occurred when it did was a fortuitous coincidence. I think, therefore, that the loss attributable to this rise in building costs was an indirect or consequential loss, for which the trespasser is not legally liable — unfortunate though it is for the owner.

This, however, does not dispose of the claim. It is clear that if the defendant had not caused the delay the plaintiff could, and would, have completed his houses and could have let them; he has therefore lost rents for a period equal to the delay and this loss is directly due to the delay. I do not think that the question whether the defendant could foresee this loss is material but this defendant in fact knew that the land was wanted for immediate building, so it is a loss which he can be taken to have foreseen, and for which I think he is liable. Taking the rents for six months at the architect's lower figure, $350 a house, I assess the amount at $8,400.

I think the plaintiff is also entitled to general damages for the trespass and I award $2,000 under this heading.

Strictly, the defendant ought also to pay arrears of rent at the rate applicable to the land as vacant land but the amount is very small in comparison and may be ignored.

As it will necessarily take some time to remove the heavy materials in question and the Chinese New Year intervenes I allow the defendant an extra month to vacate.

There will therefore be judgment for the plaintiff for $10,400 and costs and an order that the defendant vacate the land on or before 31st March next.

Judgment for the plaintiff.

MANSELL JONES & ANOR. v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Taylor, J.) February 18, 1952]
[K.L. — Criminal Summons Appeal No. 72 of 1951]

Public Servants — Offences by — Principles of sentence — Dismissal.

In assessing the sentence for an offence by a public servant the Court ought not to take into consideration the probability of dismissal.

CRIMINAL SUMMONS APPEAL.

D. G. Rawson for the 1st appellant.

R. P. S. Rajasooria for the 2nd appellant.

P. G. Clough (D.P.P.) for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — The first appellant is an Assistant Superintendent of Police, who was stationed at Mentakab in charge of the Special Branch. The second appellant is a Detective Sergeant of some 17 years' service. They were charged in the Sessions Court with causing hurt to one Madhavan for the purpose of eliciting a confession or information relating to collecting money for bandits.

The facts shortly are that the appellants arrested the complainant at the instance of the Perak police. They had no information at all as to the offence for which he was wanted. The arrest was effected, quite rightly, at night. Instead of taking him direct to the police station they took him a mile or two beyond the town to a quarry bordering jungle. They took him